



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0237]

**Hours of Service of Drivers: American Concrete Pavement Association, Inc.;
Application for Exemption**

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from the American Concrete Pavement Association, Inc. (ACPA) requesting exemptions from two requirements of the hours-of-service (HOS) regulations for drivers of certain commercial motor vehicles (CMVs) operated by ACPA members: the 30-minute rest break provision; and the requirement that short-haul drivers utilizing the record of duty status (RODS) exception return to their work-reporting location within 12 hours of coming on duty. The first exemption would enable drivers engaged in the transportation of ready-mixed concrete in vehicles, other than those outfitted with rotating mixer drums, and related materials and equipment to use 30 minutes or more of on-duty “waiting time” to satisfy the requirement for the 30-minute rest break, provided they do not perform any other work during the break. The second exemption would allow these drivers to use the short-haul exception but return to their work-reporting location within 14 hours instead of the usual 12 hours. FMCSA requests public comment on ACPA’s application for exemptions.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA-0237-0237 by any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. See the Public Participation and Request for Comments section below for further information.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as

described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, please contact Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Telephone: (202) 366-2722; E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2018-0237), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means.

FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov and put the docket number, “FMCSA-2018-0237” in the “Keyword” box, and click “Search.” When the new screen appears, click on “Comment Now!” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for

copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

ACPA seeks exemptions for all drivers of member companies transporting ready-mixed concrete and related materials and equipment from the HOS 30-minute rest break provision in 49 CFR 395.3(a)(3)(ii) and the restriction of the RODS exception for short-haul

operations to drivers who return to their normal work-reporting location within 12 hours [49 CFR 395.1(e)(1)(ii)(A)].

The first exemption from the HOS rest break provision, if granted, would enable drivers engaged in the transportation of ready-mixed concrete in vehicles, other than those outfitted with rotating mixer drums, and related materials to use 30 minutes or more of on-duty “waiting time” to satisfy the requirement for the 30-minute rest break, provided they do not perform any other work during the break. According to ACPA, a typical mainline paving project (i.e., pavement for highways, airports, streets, and large industrial facilities) involves mixing of concrete at a central mix batch plant located 3-10 miles from the paving site, transport of the freshly mixed concrete to the paving machine, placement of the concrete pavement, texturing of the slab surface, curing of the concrete slab, and finally saw-cutting of the pavement. ACPA advises that all steps in this process are time-critical, as concrete mixtures are extremely perishable. Employees must coordinate and direct a complex series of logistical steps, one of the most important elements of which is the delivery of the concrete within a time frame specified by the transportation agency or owner. The concrete is essentially made to order, then delivered by end-dump trucks so there is a steady and constant delivery of material that keeps pace with the paving equipment. Any issue that delays the well-orchestrated, just-in-time delivery of batches of concrete can result in batches being turned away by inspectors, the paving operation being shut down temporarily, and ultimately, cause time and cost overruns. According to ACPA, the criticality of concrete delivery from plant to paving site is arguably one of the most important factors in a paving process.

The second exemption, if granted, would allow these same drivers to use the short-haul RODS exception, but with a 14-hour duty period instead of 12 hours. ACPA advises that, while some short-haul drivers will be able to take advantage of the exception from the 30-

minute break, other drivers are often required to be on duty more than 12 hours in a day and therefore are not eligible to use the short-haul exception.

Although drivers using the short-haul exception in 49 CFR 395.1(e)(1) are not required to take the minimum 30-minute rest break [49 CFR 395.3(a)(3)(ii)], the extension of the short-haul 12 hour limit to 14 hours, if granted, might be construed by some to require the 30-minute break; therefore, ACPA is requesting the second exemption from the rest break requirement.

ACPA mentioned that drivers of ready-mixed concrete delivery vehicles were previously granted an exemption from the minimum 30-minute rest break provision.¹ FMCSA granted the National Ready Mixed Concrete Association a limited exemption from the 30-minute break requirement of the driver HOS regulations [80 FR 17819 April 2, 2015]. Similarly, on January 26, 2018, FMCSA granted an exemption to the National Asphalt Pavement Association for drivers engaged in the transportation of asphalt and related materials and equipment from: (1) the 30-minute rest break requirement; and (2) the 12-hour daily on-duty limit on the short-haul exception, which was expanded to 14 hours [83 FR 3864]. ACPA states that “the same reasoning supporting the exemptions from the 30-minute break time rule and allowing a 14-hour daily duty-period for drivers of ready-mixed concrete vehicles, and drivers engaged in the transportation of asphalt and related materials, applies to drivers engaged in the transportation of ready-mixed concrete in vehicles, other than those outfitted with rotating mixer drums, and related materials and equipment. These are all perishable products that are not useable if they are not dropped and spread within a brief delivery window. Because of this short delivery window, the routes from the production

¹ The hours-of-service regulations define “ready mixed concrete delivery vehicle” to mean “a vehicle designed to deliver ready-mixed concrete on a daily basis and equipped with a mechanism under which the vehicle’s propulsion engine provides the power to operate a mixer drum to agitate and mix the product en route to the delivery site.” 49 CFR § 395.2.

facility to the delivery site for both products are limited, usually between 3-10 miles, and the time spent actually driving a commercial motor vehicle is typically only a few hours per day. Thus, the drivers do not face the same fatigue factors as drivers of long-haul trucks, and therefore do not pose the same risk of a fatigue-related accident as long-haul drivers.”

ACPA states in its application that the exemptions would not have any adverse impacts on operational safety, as drivers would remain subject to the HOS regulations in 49 CFR § 395.3, and would receive sufficient rest due to the nature of their operations that limit driving to an average of only 80-100 miles per day during the paving season. ACPA believes that granting these exemptions would achieve the same level of safety provided by the two HOS rules. The term of the requested exemptions is for 5 years, subject to renewal upon application. A copy of ACPA’s application for exemptions is available for review in the docket for this notice.

Issued on: August 28, 2018

Larry W. Minor
Associate Administrator for Policy

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